

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JAMES E. DAVIS, ET AL.

PLAINTIFFS

VERSUS

CIVIL ACTION NO: 3:11CV-093-MPM-SAA

**ACA FIANCIAL GUARANTY CORPORATION
AND JOHN DOES One through Ten**

DEFENDANT

NOTICE OF CORRECTION

1. Comes now ACA Financial Guaranty Corporation (“ACA”) and files this notice of correction regarding its memorandum in support of its motion to dismiss certain of Plaintiffs’ claims. (Doc. 120). ACA states as follows:

2. ACA filed its memorandum in support of its motion to dismiss certain of Plaintiffs’ claims on October 10, 2013. (Doc. 120).

3. On page 12 of its memorandum (Doc. 120), ACA states:

Despite Plaintiffs’ claims, the indisputable documentary evidence shows that the Bond Trustee acted as agent for the bondholders and as a creditor for the entire accelerated amount due on the Original Bonds. (Cplt. at Ex. A, p.1, Ex. 2 Docket Entries 12, 29, 30 & 54).

4. ACA incorrectly directed the Court to Plaintiffs’ complaint. Instead, the citation should be only to the declaration of Erin Saltaformaggio, found in the record at Doc. 114-1 at Ex. 2; Doc. 114-3.

5. Furthermore, on page 12 of its memorandum, ACA states:

Plaintiffs identify three non-payment notices sent to ACA during the Bankruptcy Action, in January and July 2010 and January 2011. (*See* Cplt at ¶¶ 92, 96, 98).

6. These notices of nonpayment appear in the record attached to the declaration of David Clark. (Doc. 112-5-8). Additionally, one of the notices of nonpayment (the form is the

same on all) previously had been attached as Exhibit 7 to plaintiffs' response in opposition to ACA's prior motion to dismiss. (Doc. 30-7). The Court in deciding a motion to dismiss may consider documents referenced in the Complaint, even if not attached thereto. *See Little v. USAA Cas. Ins. Co.*, 2010 WL 4909869, *2 (5th Cir. Apr. 2, 2010). Because these documents are referenced in Plaintiffs' complaint, and central to their claims, the Court may consider these notices of nonpayment.

Respectfully submitted, this the 17th day of October, 2013.

/s/David Clark
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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2013, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/David Clark
OF COUNSEL